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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 DANIELIA MOLINA-MEJIA,)
09) CASE NO. C10-2083-JLR
Petitioner,)
10)
v.) REPORT AND RECOMMENDATION
11)
DHS-ICE DIRECTOR, SEATTLE,)
12)
Respondent.)
13 _____)

14 I. INTRODUCTION AND SUMMARY CONCLUSION

15 Petitioner is a native and citizen of Mexico who is being detained by the United States
16 Immigration and Customs Enforcement (“ICE”) pursuant to a final *in absentia* removal order
17 entered on August 17, 1994. (Administrative Record “AR” at L57.) On December 28, 2010,
18 petitioner, proceeding through counsel, filed the instant Petition for Writ of Habeas Corpus and
19 Motion for Stay of Removal pursuant to 28 U.S.C. § 2241, arguing that the government failed
20 to comply with the requirements for reinstatement of prior removal orders set forth in 8 U.S.C.
21 § 1231(a)(5) and 8 C.F.R. § 241.8(1)-(3). (Dkt. No. 1.) Petitioner asserts that she departed
22 the United States in 2002 to attend her mother’s funeral in Mexico and subsequently reentered

01 the United States. (Dkt. Nos. 13 and 17, Ex. 1.) She argues that because she departed the
02 United States, respondent must either begin the process to reinstate the prior order or file a new
03 Notice to Appear to commence new proceedings against petitioner. *Id.*

04 On February 4, 2011, respondent filed a Return and Motion to Dismiss asserting that on
05 January 10, 2011, petitioner received a bond hearing before an Immigration Judge (“IJ”) and
06 was denied bond. (Dkt. No. 11.) Respondent did not address petitioner’s argument that the
07 government failed to comply with the requirements for reinstatement of prior removal orders.
08 *See id.* In her reply brief, respondent asserted that she “ha[d] *not* reinstated the order of
09 removal because it [was] not clear whether Petitioner ever self-removed after she was ordered
10 removed *in absentia*.” (Dkt. No. 16 at 2.) Respondent noted that although petitioner
11 expressed an intent to submit evidence of her self-removal, no evidence had been submitted.
12 *Id.*

13 On April 4, 2011, petitioner submitted evidence of self-removal in opposition to
14 respondent’s motion to dismiss, consisting of a letter from Sonia Mirella Melgoza Fernandez, a
15 letter from Dr. Elisa Palacisco Yanez, and a certified copy of petitioner’s mother’ death
16 certificate showing petitioner as a witness. (Dkt. No. 17.) Respondent did not respond to the
17 submission of this new evidence. Accordingly, the Court directed the parties to submit
18 supplemental briefing as to the merits of petitioner’s argument that the government failed to
19 comply with the requirements for reinstatement of a prior order under 8 U.S.C. § 1231(a)(5).
20 (Dkt. No. 18.)

21 In response to the Court’s order, respondent submitted a Department of Homeland
22 Security Notice of Intent/Decision to Reinstate Prior Order, which indicates that ICE reinstated

petitioner's prior order of removal on June 3, 2011. (Dkt. No. 20, Ex. 1.) Petitioner did not respond to respondent's submission.

For the reasons set forth below, the Court recommends that respondent's motion to dismiss be granted, and that this matter be dismissed with prejudice.

II. BACKGROUND AND PROCEDURAL HISTORY

Petitioner, a native and citizen of Mexico, entered the United States without inspection by an immigration officer on or about December 23, 1990. (AR R37-38.) On February 5, 1994, petitioner was discovered by an immigration officer aboard the M/V All Alaskan processing vessel near St. Paul Island, Alaska, during a routine identity check of the crew. *Id.* Petitioner admitted that she entered the United States without inspection, and that she obtained and used a counterfeit alien registration card and a counterfeit social security number to secure employment. *Id.* Petitioner was served with an Order to Show Cause and Notice of Hearing, charging her as subject to removal under INA § 241(a)(1)(B), for entering the United States without inspection by an immigration officer. (AR L52-56.) On August 17, 1994, petitioner failed to attend the hearing and was ordered removed *in absentia*. (AR L57.) Petitioner never appealed the *in absentia* removal order. (Dkt. 1 at 2.)

On December 22, 2010, petitioner was taken into immigration custody pursuant to the 1994 *in absentia* removal order. (AR R50-52.) On December 28, 2010, petitioner filed the instant Petition for Writ of Habeas Corpus and Motion for Stay of Removal pursuant to 28 U.S.C. § 2241. (Dkt. No. 1.) The Court subsequently entered a temporary stay of removal. (Dkt. No. 3.) This matter is now ripe for review.

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01 III. DISCUSSION

02 “When an alien subject to removal leaves the country, the removal order is deemed to be
03 executed. If the alien reenters the country illegally, the order may not be executed against
04 [her] again unless it has been ‘reinstated’ by an authorized official.” *Morales-Izquierdo v.*
05 *Gonzales*, 486 F.3d 484, 487 (9th Cir. 2007). A prior order of removal may be reinstated “[i]f
06 the Attorney General finds that an alien has reentered the United States illegally after having
07 been removed or having departed voluntarily, under an order of removal.” 8 U.S.C. §
08 1231(a)(5). Section 1231(a)(5) further provides that the prior order of removal “is not subject
09 to being reopened or reviewed, the alien is not eligible and may not apply for any relief under
10 this chapter, and the alien shall be removed under the prior order at any time after the reentry.”
11 *Id.*

12 As indicated above, petitioner alleged in her habeas petition that her removal was
13 unlawful because the government failed to comply with the requirements for reinstatement of
14 prior removal orders set forth in 8 U.S.C. § 1231(a)(5) and 8 C.F.R. § 241.8(1)-(3). (Dkt. No.
15 1.) Petitioner asserted that she departed the United States in 2002 to attend her mother’s
16 funeral in Mexico and subsequently reentered the country illegally. (Dkt. Nos. 13 and 17, Ex.
17 1.) She argued that because she departed the United States and subsequently re-entered,
18 respondent could not remove her under the prior order of removal, but must either reinstate the
19 prior order or file a new Notice to Appear to commence new proceedings against petitioner.
20 *Id.*

21 On June 3, 2011, the government, apparently conceding this violation, reinstated
22 petitioner’s 1994 *in absentia* removal order. (Dkt. No. 20, Ex. 1.) Because petitioner’s prior

01 removal order has been reinstated, petitioner's argument that her removal under the 1994 *in*
02 *absentia* removal order was unlawful has become moot should be dismissed.

03 IV. CONCLUSION

04 For the foregoing reasons, the Court recommends that petitioner's petition for writ of
05 habeas corpus be DENIED, respondent's motion to dismiss be GRANTED, and this matter be
06 DISMISSED with prejudice, and that the previous temporary stay of removal issued by the
07 Court be VACATED. A proposed order accompanies this Report and Recommendation.

08 DATED this 14th day of July, 2011.

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11 Mary Alice Theiler
12 United States Magistrate Judge
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